

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SCOTT C., a minor individual, by and :
through his parents and natural :
guardians, SHARON C. AND PETER C. : No. 02-CV-4023
and SHARON C. AND PETER C., individually:
Plaintiffs, :
V. :
COLONIAL INTERMEDIATE UNIT 20 :
Defendant. :

MOTION TO DISMISS
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)

ANDAND NOW, comes the Defendant, COLONIAL INTERMEDIATE UNIT 20,AND NOW
throughthrough their attorneys, King, Spry, Hethrough their attorneys, King, Spry, H
HonorableHonorable Court the following MotionHonorable Court the following Motion
Fed. Civ. R. 12(b)(6) and in support thereof avers the following:

1. PlaintiffsPlaintiffs Sharon C. and Peter C.Plaintiffs Sharon C. and Peter C. have bro
sonson Scott, who is a seventson Scott, who is a seventeenson Scott, who is
Bethlehem Area School District.
2. DefendantDefendant Colonial Intermediate Unit 20Defendant Colonial Intermedia
serviceservice functions on behalf of a number of service functions on behalf
Bethlehem Area School District (BASD).

3. Plaintiff's Complaint alleges that CIU 20 is an LDO obligated to provide a Free Appraisal to Plaintiff.
4. Plaintiff's Complaint also alleges violation of §504 of the Rehabilitation Act. Violation of IDEA and §1983.
5. Plaintiff's Complaint requests damages, redact Scott C.'s educational records and award attorney's fees.
6. Count I of Plaintiff's Complaint attempts to allege violation of §504 of the Rehabilitation Act. (Plaintiff's Complaint, ¶45-50)
7. In Count I, Plaintiffs claim that CIU 20 has enrolled he in the partial hospitalization program. (Complaint, ¶49)
8. Count II of Plaintiff's Complaint attempts to allege violation of the Individuals with Disabilities Act (IDEA). (Complaint, ¶51-54)
9. In Count II, Plaintiffs claim that CIU has failed to provide the least restrictive environment. (Complaint, ¶54)
10. Count III of Plaintiff's Complaint attempts to allege violation of §1983. (Complaint, ¶55-59)

11. In Count III, Plaintiffs claim that CIU 20 has engaged in unlawful activities and that it deprived Scott C. of his right to FAPE in the least restrictive environment. (Complaint, ¶56)
12. Plaintiff has filed the identical Complaint against CIU 20, which is scheduled for trial on January 10, 2003.

COUNT I

13. Plaintiffs Complaint fails to state a cause of action under §504 of the Rehabilitation Act for the following reasons:
 - a. The Bethlehem School District, not CIU 20 is the responsible for compliance with §504 and IDEA;
 - b.b. Beyond its prohibition of discrimination, the basis for affirmative relief to the Community College v. Davis, 442 U.S. 262 (1979);
 - c. Plaintiffs have failed to exhaust their administrative remedies with the CIU 20;

COUNT II

14. Plaintiffs Complaint fails to state a cause of action under IDEA for the following reasons:
 - a. The Bethlehem School District, not CIU The Bethlehem School District is responsible for compliance with IDEA;
 - b.b. BASD has the primary responsibility for providing an appropriate educational program for Scott C.;

- c. Plaintiffs have failed to exhaust their administrative remedies under the CIU 20;

COUNT III

15. Plaintiffs Complaint fails to state a cause of action under §1983 for the following reasons:

a.a. Any liability pursuant to §1983 is precluded therefore must fail for the same reasons as the IDEA cause of action.

b.b. Section 1983 does not confer substantive rights, deprivation of those rights elsewhere secured. W. v. Doe, 901 F.2d 642, 646 (8th Cir. 1995)

c.c. In order for liability to be imposed, there must have been persistent and widespread unconstitutional practices by Defendant District that had become so permanent and had effect of law. Monell, 436 U.S. at 691; Jane Doe A. v. Board of St. Louis Co., 901 F.2d 642, 646 (8th Cir. 1990).

d.d. Proof of the mere existence of an unlawful policy or custom is not sufficient to maintain a §1983 action. to maintain a §1983 action proving that the municipal practice suffered. Losch v. Borough of Parkesburg, Pa., 736 F.2d 903, 910

WHEREFORE, Defendant Colonial Intermediate Unit 20 respectfully requests that judgment be entered in its favor and against the Plaintiffs.

KING, SPRY, HERMAN, FREUND & FAUL

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